

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GILBERTO VARGAS,

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT 60TH PRECENT, POLICE OFFICER
TOM A. STANTEN SHIELD #2260, POLICE OFFICER
NICHOLAS MASON SHIELD #6995, POLICE OFFICER
JOHN/JANE DOES 1-8,

Defendants.

**ANSWER TO COMPLAINT
ON BEHALF OF
DEFENDANTS CITY OF
NEW YORK AND NEW
YORK CITY POLICE
DEPARTMENT**

11 CV 2146 (SLT)(RML)

JURY TRIAL DEMANDED

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Defendants City of New York and New York City Police Department¹ by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "I" of the complaint, except admit that plaintiff purports to name the parties to this action as stated therein.
2. Deny the allegations set forth in paragraph "II" of the complaint and all of its subparts.
3. Deny the allegations set forth in paragraph "III" of the complaint and all of its subparts.
4. Deny the allegations set forth in paragraph "IV" of the complaint, except admit that plaintiff purports to claim injuries as stated therein.

¹ Upon information and belief, the individuals identified in the caption of the complaint as "Police Officer Tom A. Stanten" and "Police Officer Nicholas Mason" have not been served with a copy of the summons and complaint or requested legal representation from the Office of the Corporation Counsel, and therefore are not defendants in this action at this time.

5. Deny the allegations set forth in paragraph "V" of the complaint, except admit that plaintiff purports to seek relief as stated therein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

6. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

7. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

8. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of non-parties or third parties, and was not the proximate result of any act of the defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

9. This action may be barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

10. Plaintiff provoked any incident.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

11. Plaintiff may have failed to comply with the provisions of New York General Municipal Law § 50-e, § 50-I, and § 50-H.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

12. There was probable cause for plaintiff's arrest, detention and prosecution.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

13. Any search of plaintiff was justified by probable cause and/or reasonable suspicion.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

14. To the extent the complaint alleges claims against the City of New York under state law, such claims are barred by the doctrine of immunity from judgmental errors in the exercise of governmental functions.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

15. Punitive damages cannot be recovered as against the City of New York.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

16. At all times relevant to the incident, defendant City of New York and its employees and officials acted reasonably and in the proper and lawful exercise of their discretion. As such, defendant City is entitled to governmental immunity.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

17. The New York City Police Department is not a suable entity.

WHEREFORE, defendants City of New York and New York City Police Department request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 8, 2011

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants City of New York and
New York City Police Department
100 Church Street, Room 3-220
New York, New York 10007
(212) 788-9736

By:



Noreen Stackhouse
Assistant Corporation Counsel

To: Mr. Gilberto Vargas (By mail)
Plaintiff *Pro Se*
161 Bush Street
Brooklyn, New York 11231

DECLARATION OF SERVICE BY MAIL

I, Noreen Stackhouse, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that on July 8, 2011 I served the annexed **ANSWER ON BEHALF OF DEFENDANTS CITY OF NEW YORK AND NEW YORK CITY POLICE DEPARTMENT**, upon the *pro se* plaintiff herein, by depositing a copy of same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository at 100 Church Street, in the Borough of Manhattan, City of New York, directed to said *pro se* plaintiff at the address set forth below, being the address designated by plaintiff for that purpose:

Mr. Gilberto Vargas
161 Bush Street
Brooklyn, New York 11231

Dated: New York, New York
July 8, 2011



NOREEN STACKHOUSE
Assistant Corporation Counsel

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Defendants.

**ANSWER ON BEHALF OF DEFENDANTS
CITY OF NEW YORK AND NEW YORK
CITY POLICE DEPARTMENT**

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants City of New York and New
York City Police Department
100 Church Street
New York, N.Y. 10007*

Of Counsel: Noreen Stackhouse

Tel: (212) 788-9736

NYCLIS No.

Due and timely service is hereby admitted.

New York, N.Y., 2011

Esq.

Attorney for